

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Anna Steel	Team: Team # 8	CCRB Case #: 200716795	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 11/16/2007 11:00 AM	Location of Incident: in front of § 87(2)(b)	Precinct: 83	18 Mo. SOL 5/16/2009	EO SOL 5/16/2009	
Date/Time CV Reported Sat, 11/17/2007 9:42 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 11/17/2007 9:42 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Javier Velez	24737	935924	083 PCT
2. POF Stacey Wollack	03235	939704	083 PCT
3. An officer			083 PCT
4. Officers			083 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Angel Figueroa	15931	937818	083 PCT
2. POM Stefan Mercus	21250	939026	083 PCT
3. POM Przemyslaw Szumilo	27089	933399	083 PCT
4. SGT Michael Oconnor	01376	922904	083 PCT
5. POF Martha Barrera	01351	940900	083 PCT
6. POM Joseph Rodriguez	28899	931072	083 PCT
7. POM William Falcone	17540	938455	PBBN AC
8. SGT Roberto Rivera	00774	924396	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Stacey Wollack	Abuse: PO Stacey Wollack questioned § 87(2)(b)	
B. Officers	Abuse: Officers searched § 87(2)(b) and § 87(2)(b).	
C.POM Javier Velez	Abuse: PO Javier Velez entered and searched § 87(2)(b) in Brooklyn.	
D. An officer	Abuse: An officer entered and searched § 87(2)(b) in Brooklyn.	

### Synopsis

On November 16, 2007, at approximately 11:00 AM, § 87(2)(b) was standing in front of § 87(2)(b) in Brooklyn with two acquaintances, § 87(2)(b) and § 87(2)(b). He walked to the street to speak with his father, § 87(2)(b) who had parked in front of that location. A number of marked and unmarked police vehicles responded to the location. An officer identified through the investigation as PO Stacey Wollack of the 83<sup>rd</sup> Precinct questioned § 87(2)(b) regarding whether he lived in § 87(2)(b) (**Allegation A**) and instructed him to stand by a gate in front of this location. § 87(2)(b) and § 87(2)(b) were searched by officers whom the investigation was unable to identify (**Allegation B**). An officer identified through the investigation as PO Javier Velez of the 83<sup>rd</sup> Precinct approached § 87(2)(b) and requested the use of his keys. PO Velez and an additional officer, whom the investigation was also unable to identify, then allegedly entered § 87(2)(b) (**Allegation C** and **Allegation D**). An officer, identified through the investigation as PO Angel Figueroa of the 83<sup>rd</sup> Precinct, issued § 87(2)(b) a summons for § 87(2)(b) and issued § 87(2)(b) a summons for § 87(2)(b). PO Velez and the unidentified officer who accompanied him exited § 87(2)(b). PO Velez returned § 87(2)(b) keys and the officers then left the location.

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### Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) is a Hispanic female. § 87(2)(b) filed a complaint with the CCRB by phone on behalf of § 87(2)(b) on November 17, 2007 (encl. 3a – 3c). As § 87(2)(b) did not witness the incident, no statement was obtained from her.

§ 87(2)(b)

§ 87(2)(b) is § 87(2)(b). He is a Hispanic male with brown hair and brown eyes. He is 5’8” tall and weighs 195 pounds. § 87(2)(b) provided a brief telephone statement on November 23, 2007 (encl. 4). § 87(2)(b) was interviewed at the CCRB on November 30, 2007 (encl. 5a – 5m).

On November 16, 2007, at approximately 11:00 AM, § 87(2)(b) was standing on the front stoop of § 87(2)(b) with two friends, § 87(2)(b) and § 87(2)(b). § 87(2)(b) was wearing a green hooded sweatshirt, jeans and boots. His wallet was in the right pocket of his hooded sweatshirt, and his keys, cigarettes and chapstick were in the left pocket of his sweatshirt. § 87(2)(b) was wearing grey sweatpants, a black or a white hooded sweatshirt, and sandals. § 87(2)(b) was wearing a blue and white Yankees baseball cap, jeans and a hooded sweatshirt.

About five minutes later, § 87(2)(b) father, § 87(2)(b) pulled up and parked alongside the store at the corner of § 87(2)(b) § 87(2)(b) which is next to § 87(2)(b). § 87(2)(b) vehicle is a navy blue Chevrolet Tahoe. § 87(2)(b) approached and spoke with § 87(2)(b) who remained in his vehicle. § 87(2)(b) and § 87(2)(b) remained on the stoop. While § 87(2)(b) was speaking with § 87(2)(b) approximately eight police vehicles arrived. Two marked police vehicles drove on § 87(2)(b) and turned onto § 87(2)(b) parking at an angle in the pedestrian walkway of this corner. Four police vehicles double parked on § 87(2)(b) behind § 87(2)(b) vehicle.

on the street. Two of these vehicles were unmarked and parked behind the marked police vehicles. One was a black Ford Crown Victoria with tinted windows. The other was a burgundy Pontiac Bonneville without tinted windows. § 87(2)(b) exited his vehicle at this time.

A number of officers exited the vehicles which had parked on § 87(2)(b) and walked towards the front stoop of § 87(2)(b). § 87(2)(b) did not know if these officers spoke with either § 87(2)(b) or § 87(2)(b) on the stoop. § 87(2)(b) lit a cigarette. Four to five officers exited the two vehicles which had turned off of Grove Street. These officers approached § 87(2)(b). One of these officers, identified through the investigation as PO Stacey Wollack of the 83<sup>rd</sup> Precinct, asked § 87(2)(b) if he lived at § 87(2)(b) (**Allegation A**). When § 87(2)(b) responded affirmatively, PO Wollack told him to ‘come here’ and motioned for him to stand along a gate in front of § 87(2)(b). § 87(2)(b) was told to extinguish his cigarette, which he promptly discarded on the sidewalk.

§ 87(2)(b) joined § 87(2)(b) and § 87(2)(b) who were also standing along the gate. § 87(2)(b) was standing between § 87(2)(b) who was to his left, and § 87(2)(b) who was to his right. There were three officers standing in front of them. § 87(2)(b) alleged that he was then searched by a white male officer who had facial hair stubble, was thin, approximately 6’ to 6’1” tall and had short light brown hair. § 87(2)(b) observed from his shield that his name may have been “Hassan.” The investigation was unable to determine the identity of this officer. This officer lifted up § 87(2)(b) shirt, exposed his stomach, and felt inside the pockets of § 87(2)(b) jeans (**Allegation B**). He squeezed the outside of each pocket in his hooded sweatshirt. He asked § 87(2)(b) what each item was before removing these items from the pockets of his hooded sweatshirt. After removing his belongings, the officer returned them to § 87(2)(b) and told § 87(2)(b) to put his belongings back in his pockets.

While § 87(2)(b) was being searched, he did not say anything to any of the officers. § 87(2)(b) was standing near his vehicle at this time. § 87(2)(b) could see that an officer, identified through the investigation as PO Martha Barrera of the 83<sup>rd</sup> Precinct, was speaking to § 87(2)(b). PO Barrera told § 87(2)(b) that the officers had received a call involving a firearm, and that § 87(2)(b) and his friends matched the description of the individuals described in this call. § 87(2)(b) told § 87(2)(b) what PO Barrera had told him, and instructed him to remain quiet.

While § 87(2)(b) was being searched, § 87(2)(b) and § 87(2)(b) were also searched (**Allegation B**) by two officers. § 87(2)(b) did not see how his friends’ were searched, as § 87(2)(b) was paying more attention to what was happening to him. § 87(2)(b) alleged that a baldheaded male of light complexion with glasses searched § 87(2)(b). § 87(2)(b) did not recall any distinguishing characteristics regarding the officer who searched § 87(2)(b). The investigation was unable to identify the officers who allegedly searched § 87(2)(b) and § 87(2)(b).

After searching them, the officers spoke quietly amongst themselves while standing near § 87(2)(b) and § 87(2)(b). Two officers, one of whom was identified through the investigation as PO Javier Velez of the 83<sup>rd</sup> Precinct, approached § 87(2)(b). § 87(2)(b) described the officer who was with PO Velez as a white male who was about 5’8” to 5’9” tall, weighed approximately 180 to 190 pounds and had light brown hair. The investigation was unable to identify this officer.

PO Velez asked § 87(2)(b) if he lived in the building and then asked to see his house keys, which § 87(2)(b) provided. PO Velez and the unidentified officer then walked into the building (**Allegation C** and **Allegation D**). § 87(2)(b) asked the officer who had searched him whether the officers were going into his apartment. The officer who had searched him asked § 87(2)(b) if he had something to hide. § 87(2)(b) responded negatively, but asked if the officers had a warrant. The officer who had searched him shrugged and instructed him to remain quiet.

PO Velez and the officer who had accompanied him into the building were gone for approximately five to six minutes. During this time, § 87(2)(b) was instructed to go to his residence. § 87(2)(b) walked across the street and stood in front of his building. § 87(2)(b) remained against the gate by § 87(2)(b). § 87(2)(b) never used any profanity, nor did he shout anything. Throughout the incident,

§ 87(2)(b)'s tone of voice was quiet. A group did not form, there were simply a few people passing by on the sidewalk.

A Hispanic male officer whom the investigation was unable to identify instructed another officer, identified through the investigation as PO Angel Figueroa of the 83<sup>rd</sup> Precinct, to issue § 87(2)(b) a summons for § 87(2)(b) because § 87(2)(b) had discarded his cigarette on the sidewalk. PO Figueroa entered a marked police vehicle. A short while later, PO Figueroa exited the vehicle and handed two summonses to the officer who had searched § 87(2)(b).

Approximately twenty seconds later, PO Velez and the officer who had accompanied him exited § 87(2)(b). PO Velez returned § 87(2)(b) keys. § 87(2)(b) did not say anything at this time. The officer who had accompanied PO Velez then entered the driver's seat of the burgundy Pontiac Bonneville. The officer who had searched § 87(2)(b) handed him his summons. This officer also handed § 87(2)(b) a summons for disorderly conduct. The officers then left the location. After the officers left, § 87(2)(b) and § 87(2)(b) went to § 87(2)(b) residence. § 87(2)(b) front door was closed and locked. Upon entering, it became clear to § 87(2)(b) from the positioning of a number of items inside his residence that the officers had entered his apartment. § 87(2)(b) later took pictures (encl. 5a – 5m) of the various rooms in which items had been moved in his residence.

The investigation attempted to reach § 87(2)(b) in order to schedule a photo array regarding the remaining unidentified officers. Between March 24, 2008, and April 9, 2008, five calls were placed to § 87(2)(b). § 87(2)(b) provided numbers and a message was left on each occasion. On April 9, 2008, a second letter was sent to § 87(2)(b) which stipulated that a photo array needed to be scheduled. § 87(2)(b) made no attempt to contact the investigation with regard to this matter. The investigation was ultimately unable to reach § 87(2)(b).

### **Results of Investigation**

#### **Witness Statements:**

§ 87(2)(b)

§ 87(2)(b) is a Hispanic male. § 87(2)(b) provided a brief telephone statement (encl. 7) on December 14, 2007.

On November 16, 2007, some time in the morning, § 87(2)(b) woke up and went to a friend's house. He stood outside for approximately half an hour, at which time he was joined by § 87(2)(b) and § 87(2)(b). They proceeded to stand on § 87(2)(b) front stoop. § 87(2)(b) was not sure if § 87(2)(b) father had driven up prior to the officers' subsequent arrival.

A number of police vehicles parked in the street. They arrived from different directions. About two of these vehicles were unmarked. Seven or eight police officers approached and stated that § 87(2)(b) and his companions fit the description of individuals they were looking for. Three of the officers were in plainclothes and the remaining officers were in uniform. § 87(2)(b) recalled that one of the officers may have been wearing a white shirt and thought that a sergeant may have been at the location. § 87(2)(b) stated that the officers were very rude and that profanity was used.

§ 87(2)(b) was searched by a white male officer, who was about 6'2" tall, of medium build, and appeared to be in his mid thirties. He was given a summons for § 87(2)(b). The officers did not explain why he was issued this summons. § 87(2)(b) stated that officers also took § 87(2)(b) keys and searched his residence. As a result of this search, a house plant was broken and the front door was slightly broken as well. The officers then left the location.

The investigation made the following attempts to obtain a formal statement from § 87(2)(b). On December 4, 2007, a contact letter was mailed to § 87(2)(b) and a call was placed to his provided number. On December 10, 2007, a second call was placed to § 87(2)(b). On December 14, 2007, a call was placed to § 87(2)(b)'s provided number and an interview was scheduled for December 17, 2007.

On this date, § 87(2)(b) failed to appear for his scheduled interview. A missed appointment letter was mailed to § 87(2)(b). On January 7, 2008, a final call was placed to § 87(2)(b). On this date, a final please contact letter was mailed to § 87(2)(b). To date, § 87(2)(b) has not contacted the investigation with regard to his complaint.

§ 87(2)(b)

§ 87(2)(b) is § 87(2)(b). He is a Hispanic male. He provided a brief telephone statement on December 11, 2007 (encl. 6a – 6b). § 87(2)(g)

Although he did provide some physical descriptions for these officers, he could not recall if this is what they truly looked like.

On November 16, 2007, sometime in the morning, § 87(2)(b) was driving on § 87(2)(b) vehicle is a Chevrolet Tahoe. He saw his son, § 87(2)(b) standing on the stoop of his building with two friends, § 87(2)(b) and § 87(2)(b) parked his vehicle in front of a corner store near § 87(2)(b) next to a fire hydrant. § 87(2)(b) walked from the stoop and spoke with § 87(2)(b) § 87(2)(b) and § 87(2)(b) remained on the stoop. § 87(2)(b) spoke with § 87(2)(b) briefly. Five police vehicles and one police scooter then arrived at the location. Two police vehicles were marked, two were unmarked. They parked in such a way that § 87(2)(b) could not move his vehicle.

A number of uniformed officers exited their respective vehicles and walked towards the front stoop. They spoke with § 87(2)(b) and § 87(2)(b). § 87(2)(b) exited his vehicle and walked around to stand beside § 87(2)(b). They were approximately ten feet from the officers. § 87(2)(b) asked what was going on, but no one responded. One of the officers mentioned something about a green sweater. This officer may have been a Hispanic male and was between 5'10" and 5'11" tall. § 87(2)(b) said that § 87(2)(b) was wearing a green sweater on the day of the incident.

An officer took § 87(2)(b) and stood him next to a fence, where § 87(2)(b) and § 87(2)(b) were now standing. § 87(2)(b) and § 87(2)(b) were searched. § 87(2)(b) was not sure by whom. He continued to ask what was going on. § 87(2)(b) was repeatedly told to leave. Two officers walked to the front door of § 87(2)(b) and discovered that the front door was locked. They returned, and § 87(2)(b) said that he lived in the building. These two officers asked for his keys. § 87(2)(b) gave him the keys. The two officers said that they needed to search the hallway. The two officers then entered the building. The remaining officers kept § 87(2)(b) and § 87(2)(b) against the fence.

§ 87(2)(b) eventually began to speak with a female officer, identified through the investigation as PO Martha Barrera from the 83<sup>rd</sup> Precinct. PO Barrera explained that someone had called to make a complaint about a gun. After speaking with PO Barrera, another officer instructed the officers to give § 87(2)(b) a parking summons. The officer who gave this instruction was a Hispanic male, about 5'10" tall, weighed approximately 220 pounds, and was wearing a white shirt with three stripes on it. § 87(2)(b) asked why the officers would give him a summons, since he could not move his vehicle when all the police vehicles were boxing him in. The officer who arrived on the scooter issued § 87(2)(b) a summons for parking next to a fire hydrant.

Some time thereafter, § 87(2)(b) spoke with another officer about this ticket. This officer was a Hispanic male, between 5'10" to 6' tall, and weighed approximately 220 pounds. PO 4 told § 87(2)(b) not to worry, because the officers would not issue him a summons. § 87(2)(b) said that they already had. Around this time, § 87(2)(b) was smoking. § 87(2)(b) told § 87(2)(b) not to listen to the officers, and to put out his cigarette. § 87(2)(b) put out his cigarette on the street. At some point, the officers sent § 87(2)(b) across the street. § 87(2)(b) remained standing against the fence. § 87(2)(b) was not doing or saying anything. Throughout the incident, a crowd never formed.

The two officers who had entered § 87(2)(b) returned, and all the officers left. The entire incident lasted approximately ten to fifteen minutes. § 87(2)(b) drove away after the officers left the location. § 87(2)(b) later saw § 87(2)(b) who told him that the two officers who had entered § 87(2)(b) had searched his residence.

#### **Attempts to Locate Additional Witnesses:**

§ 87(2)(b)

§ 87(2)(b) identified § 87(2)(b) as a victim in this case, and provided an address and telephone number at which he could be reached. On December 4, 2007, a contact letter was mailed to § 87(2)(b). Between this date and January 7, 2008, five calls were placed to § 87(2)(b)'s provided number. On each occasion, the number provided to be disconnected. § 87(2)(b)'s address was verified via Lexis Nexis on November 26, 2007. On December 10, 2007, a Verizon subpoena was submitted for any records pertaining to § 87(2)(b) at his provided address. A second subpoena was sent on January 3, 2008, when no results were forwarded to the investigation regarding the first request. Verizon could find no record of a subscriber at § 87(2)(b)'s provided address. On January 7, 2008, a final contact letter was sent to § 87(2)(b). The investigation was ultimately unable to contact § 87(2)(b) regarding this case.

#### **Communications Records:**

##### **911 Communications CD**

On November 16, 2007, an anonymous male called 911 (encl. 32) to report that he had seen three males in front of § 87(2)(b). One of them had jumped behind the building. One was a black male wearing a leather jacket and blue dungarees. The anonymous male stated that the black male had a firearm and that he had seen the handle. The anonymous male could not specify where he had seen the firearm. The black male was with two Hispanic males. One was wearing a green hooded sweatshirt and the other was wearing a red jacket. The Hispanic males appeared young. They were about 17 to 19 years of age. The anonymous male reported that they were selling drugs in front of the building and walking in and out of the front hallway.

##### **SPRINT Record**

On November 16, 2007, at 11:09 AM, the SPRINT (encl. 33) shows that an anonymous individual called 911 to report that a black male in a black leather jacket and two additional males, one wearing a red jacket and the other wearing a green jacket, were selling drugs in front of § 87(2)(b). One of these males, who appeared to be about nineteen years old, had a gun. The anonymous individual reported that his male entered the hallway of § 87(2)(b). At 11:19 AM, Sector A of the 83<sup>rd</sup> Precinct resumed patrol. At 11:29 AM, the patrol sergeant indicated that a summons had been served.

#### **Police Officer Statements:**

##### **PO Angel Figueroa**

PO Angel Figueroa is § 87(2)(b) years old. He is a Hispanic male with black hair and brown eyes. He is 5'8" tall and weighs 200 pounds. PO Figueroa is assigned to the 83<sup>rd</sup> Precinct and has been a member of the service for three years. PO Figueroa was interviewed at the CCRB on February 19, 2008 (encl. 13a – 13c). On the day of the incident, PO Figueroa worked from 9:30 AM to 6:05 PM. He was assigned to conditions with PO Mercus in radio motor patrol vehicle 2332. PO Figueroa's memobook (encl. 8a – 8c) reflects that at 11:10 AM, he received a call pertaining to a suspect with a firearm. At 11:20 AM, PO Figueroa noted that three males had been stopped. At 11:25 PM, PO Figueroa issued two summonses.

##### **Police Reports**

On November 16, 2007, PO Figueroa prepared a stop, question and frisk report (encl. 9a – 9b) for § 87(2)(b). The report notes that § 87(2)(b) was stopped because he fit a description, was engaged

in actions indicative of casing a victim or location and which indicated that he was acting as a lookout, was moving furtively and had a suspicious bulge on his front right hip. § 87(2)(b) was also stopped due to a received report, because the area had a high incidence of the reported offense, and because he changed directions at the sight of an officer. The report indicated that § 87(2)(b) was frisked because of furtive movements, refusal to comply with the officers directions and also because of the previously mentioned bulge on his front right hip. It was noted that § 87(2)(b) was issued a § 87(2)(b) for littering and was not searched.

On November 16, 2007, PO Figueroa also prepared a stop, question and frisk report (encl. 10a – 10b) for § 87(2)(b) in which the same indicators referenced in § 87(2)(b) report were noted in § 87(2)(b)'s report. § 87(2)(b) was frisked, but no bulge was noted on § 87(2)(b)'s person. It was noted that § 87(2)(b) was issued a summons for disorderly conduct and was not searched.

On November 16, 2007, PO Figueroa issued summons number § 87(2)(b) (encl. 11) to § 87(2)(b) for § 87(2)(b). PO Figueroa also issued summons number § 87(2)(b) (encl. 12) to § 87(2)(b) for § 87(2)(b).

### ***CCRB Statement***

On November 16, 2007, at 11:10 AM, PO Figueroa and PO Mercus received a call regarding a suspect with a firearm. PO Figueroa could recall no other details pertaining to this call. PO Figueroa responded to the location and parked on § 87(2)(b) towards Linden Avenue. PO Figueroa observed that approximately five to six officers and two additional police vehicles were already at the location. PO Figueroa did not recall who these officers were. At some point, additional officers responded to the scene after PO Figueroa, but PO Figueroa did not recall who these officers were. The officers were standing by two to four male individuals, who were standing along a gate in front of § 87(2)(b). PO Figueroa did not recall what these males were wearing, but did recall that they fit the precise description of the call they had previously received. PO Figueroa did not recall whether one of the individuals had been wearing a green sweatshirt. PO Figueroa had never seen any of these individuals before the date of the incident.

When he arrived, PO Figueroa did not recall speaking to any of the officers present about the incident. PO Figueroa did not frisk, search or touch any of these individuals. PO Figueroa saw an officer frisk the individuals standing along the gate. PO Figueroa did not know which officer frisked the individuals. During the time in which these individuals were frisked, the males became frustrated and started to curse at the officers. PO Figueroa recalled that one of them said, “What the fuck,” and accused the officers of harassing them. PO Figueroa explained that this is a common complaint.

PO Figueroa recalled that an older Hispanic male, whom the investigation identified as § 87(2)(b) was inquiring about one of the males who had been stopped by the officers. PO Figueroa assumed that he was a family member. PO Figueroa thought that § 87(2)(b) had walked from the corner of § 87(2)(b) and § 87(2)(b). § 87(2)(b) spoke to one of the officers present, but PO Figueroa did not recall whom. PO Figueroa did not recall anything pertaining to a Chevrolet Tahoe, or any parking summons issued to any vehicles in the vicinity of the incident location.

PO Figueroa recalled that an officer was looking through the trash in front of § 87(2)(b). He did not recall which officer this was. PO Figueroa did not recall any officers entering § 87(2)(b) nor did he recall any officers taking § 87(2)(b) keys. PO Figueroa was presented with a photograph of the interior of § 87(2)(b) home. This photograph was not familiar to PO Figueroa. PO Figueroa never entered § 87(2)(b) residence.

At some point, an officer instructed one of the males, § 87(2)(b) to leave because they had obtained the appropriate information with which to file a stop, question and frisk report, and his presence was no longer necessary. § 87(2)(b) refused to leave the location because one of the individuals was his friend. PO Figueroa explained that § 87(2)(b) had to leave, and that if he did not, he would be issued a summons. § 87(2)(b) refused to comply. PO Figueroa issued § 87(2)(b) a summons for

§ 87(2)(b) took the summons and walked away. PO Figueroa did not recall where § 87(2)(b) went.

§ 87(2)(b)'s friend, § 87(2)(b) was becoming increasingly irate at this time. § 87(2)(b) directed some profanity towards the sergeant on scene. PO Figueroa did not recall who this sergeant was. § 87(2)(b) was holding a lit cigarette. § 87(2)(b) threw this cigarette on the ground in front of the officers. PO Figueroa then issued § 87(2)(b) a summons for littering. PO Figueroa explained that § 87(2)(b) may have put out his cigarette before he issued § 87(2)(b) the summons for disorderly conduct, but he could not be sure, because his recollection of the incident was vague at best. PO Figueroa was at the location for approximately two more minutes. No firearms were recovered at the scene. All of the officers then left the location.

PO Figueroa was asked about the stop, question and frisk reports that he had prepared for § 87(2)(b) and § 87(2)(b). PO Figueroa did not recall preparing these. The reports were shown to PO Figueroa. Reading the reports did not aid in PO Figueroa's recollection. One of the reports noted that a suspicious bulge had been seen on § 87(2)(b) person. PO Figueroa did not recall observing this bulge. PO Figueroa was asked whether it is normal for an officer who did not originally stop someone to prepare the corresponding stop, question and frisk report. PO Figueroa said that it is unusual for this to happen, but thought that it may have been because he prepared summonses for both individuals.

PO Figueroa was asked to comment on the incident location in general. PO Figueroa said that it is a drug prone location with a high incidence of criminal activity. Officers receive numerous complaints originating from this area. PO Figueroa said that the area is also infamous for gang activity, specifically the Bloods. With respect to the buildings within the vicinity of § 87(2)(b) PO Figueroa said that it is usual for residents to throw things at police officers when they respond to calls.

#### **PO Stefan Mercus**

PO Stefan Mercus is § 87(2)(b) years old. He is a white male, is bald, and has brown eyes. He is 5'9" tall and weighs 224 pounds. PO Mercus is assigned to the 83<sup>rd</sup> Precinct and has been a member of the service for two years. PO Mercus was interviewed at the CCRB on January 23, 2008 (encl. 15a – 15b). On the day of the incident, PO Mercus was assigned to conditions with PO Figueroa in marked patrol van 5980. There were no relevant entries in PO Mercus' memobook (encl. 14a – 14b) regarding this incident.

#### ***CCRB Statement***

On November 16, 2007, at approximately 11:00 AM, PO Mercus received a radio run concerning a number of individuals with firearms either at § 87(2)(b) or near the corner of § 87(2)(b) and § 87(2)(b). PO Mercus recalled that the radio run mentioned the number of individuals, and thought he recalled something about a green jacket. PO Mercus responded to the scene and double parked in front of § 87(2)(b). There were already uniformed officers on scene when he arrived. He did not know how many officers were there at that time. PO Mercus did not recall anything regarding a Chevy Tahoe at the location. PO Mercus did not recall an older Hispanic male at the location. PO Mercus saw four or five civilians standing against a gate in front of § 87(2)(b). There were officers speaking to these civilians at this time. PO Mercus did not recognize any of these civilians from any previous encounters.

PO Mercus exited his vehicle and approached the officers. He asked what was going on, though he did not recall what the officers' said in reply. PO Mercus radioed to Central to confirm the description of the suspects described in the aforementioned radio run. PO Mercus then frisked an individual who matched this physical description. He was not instructed to do so by another officer. PO Mercus frisked this person to determine whether he had a weapon, as was referenced in the radio run. PO Mercus frisked this person for his personal safety. PO Mercus never felt inside the pockets of this individual. PO Mercus never saw any officers search any civilians, or remove any items from any civilian's pocket. PO Mercus did not remember what this individual was wearing. PO Mercus did not know if the individual was wearing a green jacket. PO Mercus was shown a photograph of § 87(2)(b). PO Mercus did not know if the individual he



frisked was § 87(2)(b). At this time, other officers were frisking the individuals standing next to the civilian that PO Marcus was frisking. PO Marcus did not know which officers' were conducting these frisks.

PO Marcus described the demeanor of the individuals as unfriendly. PO Marcus explained that this is fairly typical when civilians are stopped by the police. PO Marcus always tries to calm them down or ask Central to repeat whatever radio run was received so that the civilian will know, for example, that he was stopped for wearing a green jacket. PO Marcus did not recall issuing any verbal commands to any civilians. PO Marcus did not remember any officers looking through the garbage in front of § 87(2)(b). He explained that this would not be unusual, as it is standard procedure to look for a weapon in the vicinity of any location described in a gun run.

PO Marcus remembered that officers asked these individuals where they lived. PO Marcus did not remember any officers requesting the use of their keys. PO Marcus did not know whether any officers entered § 87(2)(b). He explained that, after awhile, a number of officers responded to the location and he was primarily concerned with the individual in front of him. PO Marcus did not remember if any of the individuals were smoking. PO Marcus did not know if any of the responding officers' had a name which sounded like "Hassan."

PO Marcus recalled that his partner, PO Figueroa, may have issued a summons while they were at the location. PO Marcus did not know if an officer instructed PO Figueroa to issue this summons. PO Marcus did not remember what this summons was for, or whether any vehicles were issued a parking summons at the location. PO Marcus was shown a copy of the summons that PO Figueroa issued to § 87(2)(b) for disorderly conduct. PO Marcus did not know anything about why § 87(2)(b) would have been issued this summons. PO Marcus recalled that the individuals standing along the fence were upset. PO Marcus could not elaborate on their demeanor. PO Marcus did not recall any of the individuals swearing. PO Marcus did not recall a crowd forming at the location.

PO Marcus did not know how long he was at the location. PO Marcus left the location when the incident was over. All the officers who had responded left one by one.

### **PO Martha Barrera**

PO Martha Barrera is § 87(2) years old. She is a Hispanic female with brown hair and brown eyes. She is 5'2" tall and weighs 120 pounds. PO Barrera is assigned to the 83<sup>rd</sup> Precinct and has been a member of the service for one year. PO Barrera was interviewed at the CCRB on January 23, 2008 (encl. 19a – 19b). On the day of the incident, PO Barrera was assigned to precinct patrol as a sergeant's operator with Sgt. Rivera. She worked from 7:05 AM to 3:40 PM in radio motor patrol vehicle 4151. PO Barrera's memobook (encl. 18a – 18b) reflects that on November 16, 2007, at 11:20 AM she responded to § 87(2)(b) in response to a call concerning a male with a firearm.

### ***CCRB Statement***

On November 16, 2007, at approximately 11:20 AM, PO Barrera responded to § 87(2)(b). PO Barrera had previously received a radio run concerning a male with a firearm. She did not recall the race of this male, or what this male was reportedly wearing. When PO Barrera arrived, a sector from the 83<sup>rd</sup> Precinct was already on scene. PO Barrera did not recall what sector had responded. A marked police vehicle and a civilian truck were at the location. PO Barrera remembered the truck because it was parked by a fire hydrant. PO Barrera did not know if this vehicle was issued a parking summons. PO Barrera did not speak to any civilians near this truck.

When PO Barrera arrived, everything appeared normal, there were no civilians in handcuffs, and nothing appeared out of the ordinary. PO Barrera saw three male individuals standing in front of § 87(2)(b). PO Barrera was shown a photograph of § 87(2)(b). PO Barrera did not recall anything based on this photograph. PO Barrera did not recall the demeanor of these individuals. One of these individuals was wearing a black jacket. PO Barrera did not recall if one of these individuals was smoking a cigarette. PO Barrera did not know what officers were standing near them. PO Barrera was not familiar

with any officers whose name sounds like “Hassan.” PO Barrera never spoke to any officers regarding why these individuals had been stopped. PO Barrera assumed that they had been stopped in relation to the radio run she had received.

When she arrived, these individuals were not being searched. They were not searched at any point while PO Barrera was at the location. When PO Barrera arrived, she did not observe any officers looking through the garbage in front of § 87(2)(b). PO Barrera never saw any officers take any of the three individuals’ keys. She never saw any officers enter § 87(2)(b). PO Barrera did not recall any of the three individuals leaving the location or walking across the street. The three individuals did not receive a summons while PO Barrera was at the scene. PO Barrera did not remember speaking to any civilians at the location. A crowd never formed while PO Barrera was at the location. PO Barrera did not know if Sgt. Rivera spoke with any officers at the location. PO Barrera was at the location for no more than five minutes. PO Barrera then received another call, to which PO Barrera and Sgt. Rivera then responded.

PO Barrera explained that, when a radio run concerning firearms at a particular location is received, it is normal procedure to speak with anyone who matches the physical description of this call. The responding officers would attempt to figure out why these individuals are at the location and take down their information. If the radio run concerns firearms in a particular building, the officers would enter that building.

#### **Police Officer Statements with No Recollection of Incident:**

§ 87(2)(g)

#### **Sgt. Roberto Rivera**

Sgt. Roberto Rivera is § 87(2)(b) years old. He is a Hispanic male with brown hair and brown eyes. He is 5’9” tall and weighs 225 pounds. Sgt. Rivera is assigned to the 83<sup>rd</sup> Precinct and has been a member of the service for eight years. Sgt. Rivera was interviewed at the CCRB on April 11, 2008 (encl. 31a – 31b). On the day of the incident, Sgt. Rivera was the assigned patrol supervisor. PO Barrera was his assigned operator. Sgt. Rivera worked from 6:00 AM to 2:47 PM. Sgt. Rivera’s memobook (encl. 30a – 30c) reflects that at 11:20 AM he responded to a call in which it had been reported that a male was in the possession of a firearm. At 11:25 AM, Sgt. Rivera noted that a conditions unit had issued a summons.

#### **PO Stacy Wollack**

PO Stacy Wollack is § 87(2)(b) years old. She is a Hispanic female with brown hair and green eyes. She is 5’7” tall and weighs 160 pounds. PO Wollack is assigned to the 83<sup>rd</sup> Precinct and has been a member of the service for two years. PO Wollack was interviewed at the CCRB on January 24, 2008 (encl. 21a – 21b). On the day of the incident, PO Wollack was assigned to sector patrol with PO McMaster. She worked from 7:05 AM to 3:40 PM in radio motor patrol vehicle 4163. There were no relevant entries in PO Wollack’s memobook (encl. 20a – 20c) regarding the incident.

#### **PO Javier Velez**

PO Javier Velez is § 87(2)(b) years old. He is a Hispanic male with brown hair and brown eyes. He is 5’9” tall and weighs 185 pounds. PO Velez is assigned to the 83<sup>rd</sup> precinct and has been a member of the service for four years. PO Velez was interviewed at the CCRB on February 8, 2008 (encl. 25a – 25b). On the day of the incident, PO Velez was assigned to anti-crime and worked from 8:00 AM to 4:00 PM. There were no relevant entries in PO Velez’s memobook (encl. 24a – 24b) regarding the incident.

#### **PO Joseph Rodriguez**

PO Joseph Rodriguez is § 87(2)(b) years old. He is a Hispanic male with brown hair and brown eyes. He is 5’11” tall and weighs 185 pounds. PO Rodriguez is assigned to the 83<sup>rd</sup> Precinct and has been a member of

the service for five years. PO Rodriquez was interviewed at the CCRB on January 24, 2008 (encl. 23a – 23b). On the day of the incident, PO Rodriquez was assigned to sector patrol with PO Szumilo. He worked from 7:05 AM to 3:40 PM in radio motor patrol vehicle 2617. There were no relevant entries in PO Rodriquez’s memobook (encl. 22a – 22c) regarding this incident.

#### **PO Przemyslaw Szumilo**

PO Przemyslaw Szumilo is § 87(2)(b) years old. He is a white male with blonde hair and blue eyes. PO Szumilo is assigned to the 83<sup>rd</sup> Precinct and has been a member of the service for five years. PO Szumilo was interviewed at the CCRB on April 7, 2008 (encl. 27a – 27b). On the day of the incident, PO Szumilo was assigned to sector patrol with PO Rodriquez. He worked from 7:05 AM to 3:40 PM. There were no entries in PO Szumilo’s memobook (encl. 26a – 26b) pertaining to the incident.

#### **PO William Falcone**

PO William Falcone is § 87(2)(b) years old. He is a white male with brown hair and brown eyes. PO Falcone is assigned to Brooklyn North Anti-Crime and has been a member of the service for three years. At the time of the incident, PO Falcone was assigned to the 83<sup>rd</sup> Precinct. PO Falcone was interviewed at the CCRB on March 13, 2008 (encl. 29a – 29b). On the day of the incident, PO Falcone was assigned to anti-crime and worked from 9:30 AM to 6:05 PM with PO Velez and PO Harvey. There were no entries in PO Falcone’s memobook (encl. 28a – 28b) regarding the incident.

#### **Sgt. Michael O’Connor**

Sgt. Michael O’Connor is § 87(2)(b) years old. He is a white male with brown hair and blue eyes. He is 5’10” tall and weighs 190 pounds. Sgt. O’Connor is assigned to the 83<sup>rd</sup> Precinct and has been a member of the service for ten years. Sgt. O’Connor was interviewed at the CCRB on March 5, 2008 (encl. 17a – 17b). On the day of the incident, Sgt. O’Connor worked from 6:00 AM to 2:57 PM in a black unmarked vehicle. There were no relevant entries in Sgt. O’Connor’s memobook (encl. 16a – 16b) regarding the incident.

#### **CCRB Statements**

Sgt. Rivera, PO Wollack, PO Velez, PO Rodriquez, PO Szumilo, PO Falcone and Sgt. O’Connor did not recall responding to § 87(2)(b). None of these officers recalled receiving the call in which it was reported that three males, respectively wearing a red jacket, a black jacket and a green jacket, were outside this location and were in the possession of a firearm. All of these officers were presented with a photograph of § 87(2)(b). The only officer who was familiar with this photograph was PO Velez, who stated that he had seen § 87(2)(b) in the vicinity of § 87(2)(b) but did not recall seeing him on November 26, 2007. None of these officers recalled stopping, frisking or searching any civilians. None of these officers recalled entering § 87(2)(b) or recalled seeing any other officers enter this location.

#### **Police Department Documents:**

##### **83<sup>rd</sup> Precinct Roll Call**

The roll call for November 16, 2007 (encl. 34a – 34e), shows that Sgt. O’Connor was the assigned patrol supervisor and Sgt. Rivera was the assigned DVO supervisor. The roll shows that PO Rodriquez and PO Szumilo were assigned to Sector A and PO Wollack was assigned to Sector S. PO Barrera was the assigned sergeant’s operator. PO Falcone and PO Velez were assigned to anti-crime, and PO Mercus and PO Figueroa were assigned to conditions. According to the precinct roster, there is no officer with the last name of “Hassan.” There is one male officer named Alexander Hesse. However, according to the roll call, he was not on duty at the time of the incident.

##### **Stop, Question and Frisk Log**

The stop, question and frisk log for November 16, 2007 (encl. 25), shows that PO Figueroa prepared a report for § 87(2)(b) and § 87(2)(b) for suspected criminal possession of a weapon.

### **83<sup>rd</sup> Precinct Vehicle Utilization Log**

Though no vehicle utilization log was forwarded to the investigation, the request for this document (encl. 37b) was returned with a handwritten note which stipulated that there were two unmarked vehicles used by the 83<sup>rd</sup> Precinct on November 16, 2007. One was a maroon 2001 Pontiac whose license plate was § 87(2)(e) and the other was a black Ford Van whose license plate was § 87(2)(e). The daily vehicle assignment sheet was not available.

### **Officer CCRB History**

Neither PO Velez nor PO Wollack (encl. 2a – 2b) has had any CCRB substantiated allegations which have resulted in the imposition of discipline.

### **Civilian Criminal Conviction History**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b)

## **Conclusions and Recommendations**

### **Officer Identification**

§ 87(2)(b) identified the officer who stopped him as a white female who was about 5’5” tall and had blonde hair. He observed from her shield that her name was PO Wollack. § 87(2)(g) § 87(2)(g)

§ 87(2)(b) alleged that he was searched by a white male officer who had facial hair stubble, was thin, approximately 6’ to 6’1” tall and had short light brown hair. § 87(2)(b) observed from his shield that his name may have been “Hassan.” None of the officers interviewed by the investigation recalled searching § 87(2)(b). PO Mercus recalled frisking someone in front of § 87(2)(b) but did not recall whether this individual was § 87(2)(b) § 87(2)(g).

None of the officers assigned to the 83<sup>rd</sup> Precinct who were working on the day of the incident were named “Hassan.” According to the precinct roster, there is no officer with the last name of “Hassan.” There is one male officer named Alexander Hesse. However, according to the roll call, he was not on duty at the time of the incident. There was no documentary evidence to suggest that any commands other than the 83<sup>rd</sup> Precinct responded to the incident location. § 87(2)(g)

§ 87(2)(b) also alleged that § 87(2)(b) and § 87(2)(b) were searched by two other officers. None of the officers interviewed by the investigation recalled searching either of these individuals. § 87(2)(b) could not provide a sufficiently detailed physical description with which to aid in the identification of these officers. § 87(2)(g)

§ 87(2)(b) alleged that his building and residence were entered by two officers. He described one of these officers as a Hispanic male of light complexion who was about 5’10” to 5’11” tall, weighed approximately 195 to 200 pounds, and had combed back black hair. § 87(2)(b) observed from his shield that his name was “Velez,” and also recognized him from previous interactions. § 87(2)(g)

§ 87(2)(b) described the second officer who entered his building and residence as a white male who was about 5'8" to 5'9" tall, weighed about 180 to 190 pounds, and had very light brown hair. PO Falcone has light brown hair and weighs 183 pounds, though he is 5'10" tall. However, PO Falcone's memobook (encl. 28a – 28b) shows that he was assigned to administrative duties and did not leave the confines of the 83<sup>rd</sup> Precinct on the day of the incident. § 87(2)(b) stated that this officer entered the driver's seat of an unmarked police vehicle, which he described as a burgundy Pontiac Bonneville. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### Undisputed Facts

It is undisputed that § 87(2)(b) matched the physical description outlined in the call placed to 911 on the day of the incident.

### Disputed Facts

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Assessment of Evidence

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

On November 16, 2007, at approximately 11:00 AM, § 87(2)(b) alleged that PO Wollack approached him and asked him whether he lived in § 87(2)(b). When § 87(2)(b) responded affirmatively, PO Wollack instructed him to stand by the gate in front of that location next to § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Both the SPRINT (encl. 33) and the transcription of the call placed to 911 (encl. 32) on the day of the incident noted that a Hispanic male wearing a green sweatshirt was standing in front of § 87(2)(b) with two additional males. According to the anonymous caller, one of these males had a firearm and had entered the building. All parties concur that § 87(2)(b) was wearing a green hooded sweatshirt on the day of the incident. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that he was searched by a white male officer who lifted up his shirt, exposed his stomach, and felt inside the pockets of § 87(2)(b) jeans. § 87(2)(b) said that this officer also squeezed the outside of each pocket in his hooded sweatshirt and asked § 87(2)(b) what each item was before removing these items from the pockets of his hooded sweatshirt. After removing his belongings, the officer returned them to § 87(2)(b) and told § 87(2)(b) to put his belongings back in his pockets. While both § 87(2)(b) and § 87(2)(b) stated that § 87(2)(b) was searched on the day of the incident, they were not certain by whom § 87(2)(b) was searched.

None of the officers who were interviewed recalled searching § 87(2)(b). None of the officers interviewed who recalled the incident could recall an officer searching § 87(2)(b) person. While PO Figueroa prepared a stop, question and frisk report for § 87(2)(b) he did not recall preparing this report and stated that he did not frisk or search either § 87(2)(b) or his acquaintances. The report noted that § 87(2)(b) was frisked, but was not searched § 87(2)(g)

§ 87(2)(b) also alleged that an officer searched § 87(2)(b) while another officer searched § 87(2)(b) could only describe one of these officers. § 87(2)(b) said that a baldheaded male of light complexion with glasses searched § 87(2)(b). § 87(2)(b) said that he was searched by a white male who was about 6'2" tall. None of the officers recalled searching any civilians on the day of the incident. While PO Marcus recalled frisking an individual, he could not recall who he frisked. PO Marcus, though white and baldheaded, does not wear glasses and is 5'10" tall. § 87(2)(g)

§ 87(2)(b) stated that PO Velez approached him, verified that he resided in § 87(2)(b) and requested his keys. PO Velez and an additional officer then entered this building. § 87(2)(g) § 87(2)(b) did not see PO Velez and the officer who accompanied him actually enter his residence. § 87(2)(b) provided a number of photographs (encl. 5a – 5m) which depicted the various rooms in which items had been allegedly moved by the officers. § 87(2)(g)

PO Velez did not recall responding to the incident location and did not recall entering § 87(2)(b) on the day of the incident. His memobook (encl. 24a – 24b) could not aid in determining where PO Velez was at the time of the incident. PO Velez, when presented with a photograph of § 87(2)(b) stated that he had seen § 87(2)(b) in the vicinity of § 87(2)(b) before, though he did not recall seeing him on November 16, 2007. None of the officers who recalled responding to the location recalled whether any officers entered § 87(2)(b). While PO Barrera never saw any officers enter § 87(2)(b) she did explain that if there was a report of firearms in a particular building, the officers would enter that location. § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) corroborated § 87(2)(b) statement. Both the SPRINT (encl. 33) and the transcription of the call placed to 911(encl. 32) noted that the males who were reportedly in possession of a firearm were walking in and out of § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

[REDACTED]

**Allegation A. PO Stacey Wollack questioned § 87(2)(b)**

As articulated in *People v. Debour*, a police officer can intrude on an individual’s privacy beyond that which is permitted during a request for information when there is “a founded suspicion that criminal activity is afoot” (encl. 1a – 1b). The requirement for founded suspicion stipulates that the officer must possess some suspicion of an actual crime. Though that suspicion need not be individualized, the approach must be based on more than an articulable reason.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED] The Court of Appeals has “permitted a temporary detention pursuant to the inquiry” (encl. 1a – 1b) in the acknowledgement of the difficulty posed in questioning an individual regarding a possible crime without some sort of practical detention.

§ 87(2)(g)

[REDACTED]

**Allegation B. Officers searched § 87(2)(b) and § 87(2)(b)**

§ 87(2)(g)

[REDACTED]

**Allegation C. PO Javier Velez entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn.**

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**Allegation D. An officer entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn.**

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: